

CHAPTER 4-10.3 DRY BEAN INDUSTRY PROMOTION

4-10.3-01. Legislative policy. The production, development, marketing, and promotion of dry beans in this state is important to the general welfare of the people of North Dakota. It is in the public interest that better methods of production, processing, and marketing of dry beans and that advertising and promoting of dry beans grown in this state be fostered, encouraged, developed, and improved so the dry bean industry within the state, the people directly or indirectly employed by said industry and the people of North Dakota should be benefited thereby, the accomplishment of which requires and demands the establishment of a North Dakota dry bean council for the purposes and with the objectives of contributing to the stabilization and improvement of the agricultural economy of this state. This chapter does not abrogate or limit in any way the rights, powers, duties, and functions of the office of the agriculture commissioner or any other agency of the state, but is supplementary thereto and in aid and cooperation therewith. This chapter does not authorize the North Dakota dry bean council to engage in competitive business enterprises, it being the intended purpose of this chapter that the council, through research and advertising, shall promote North Dakota-grown dry beans.

4-10.3-02. Definitions. Whenever used in this chapter:

1. "Commissioner" means agriculture commissioner or the commissioner's designated representative.
2. "Council" means the North Dakota dry bean council.
3. "Designated handler" means any person who initially places dry beans, whether as an owner, agent, or otherwise, into the channels of trade and commerce, or any person who is engaged in the processing of beans into food for human consumption in any form. A grower selling the grower's unharvested dry beans, or delivering the grower's dry beans from the farm on which they are produced to storage facilities, packing sheds, or processing plants within the state is not considered to be a designated handler. For the purposes of assessments and reporting, "designated handler", includes a grower selling the grower's unharvested dry beans out of state, or delivering the grower's dry beans from the farm where they were produced to any storage facilities, packing sheds, or processing plants located outside the state.
4. "Dry beans" means any and all varieties of dry beans, excluding soybeans, harvested within the state.
5. "Grower" means any person who plants, raises, and harvests dry beans from more than ten acres [4.05 hectares].
6. "Hundredweight" means a one hundred pound unit [45.36 kilograms] or a combination of packages making a one hundred pound unit [45.36 kilograms] or any shipment of dry beans based on invoices or bills of lading records.
7. "Participating grower" means a grower who has not gained exemption from the payment of taxes on dry bean production under this chapter for a particular year, or a grower who is not exempt from the payment of taxes on dry bean production under this chapter.
8. "Person" means an individual, partnership, corporation, limited liability company, association, grower, cooperative, or any other business unit.
9. "Processor" means a person who is actively engaged in the processing of dry beans for human consumption.

4-10.3-03. North Dakota state dry bean council - Membership - Election - Term.

1. The North Dakota dry bean council is composed of one participating grower elected from each of the districts established in section 4-10.3-04. The chairman of the council must be a member of the council elected by a majority vote of the council. The agriculture commissioner is an ex officio member of the council.
2. Every elected council member must be a citizen of the state and a bona fide resident of and participating grower in the district the member represents.
3. The term of each elected member is three years and begins on April first of the year of election, except that initially one member must be elected for a three-year term; two members must be elected for two-year terms; and two members must be elected for one-year terms as designated by the commissioner.
4. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the council shall, by majority vote, appoint another qualified participating grower for the remainder of the term of the office vacated.
5. The commissioner, or a county agent designated by the commissioner, in cooperation with the cooperative extension service, shall conduct all elections under this section in each district in the manner the commissioner deems fair and reasonable. Elections must be held before April first of each year.
6. No elected member of the council is eligible to serve more than three consecutive three-year terms.

4-10.3-04. Dry bean districts - Establishment. The following dry bean districts are established for the purpose of dividing the state into districts containing as nearly equal dry bean acreages as practicable:

1. District one consists of Cavalier, Pembina, and Towner Counties.
2. District two consists of Ramsey and Walsh Counties.
3. District three consists of Grand Forks and Nelson Counties.
4. District four consists of Griggs, Steele, and Traill Counties.
5. District five consists of Barnes, Cass, Dickey, Kidder, LaMoure, Logan, McIntosh, Ransom, Richland, Sargent, and Stutsman Counties.
6. District six consists of Adams, Benson, Billings, Bottineau, Bowman, Burke, Burleigh, Divide, Dunn, Eddy, Emmons, Foster, Golden Valley, Grant, Hettinger, McHenry, McKenzie, McLean, Mercer, Morton, Mountrail, Oliver, Pierce, Renville, Rolette, Sheridan, Sioux, Slope, Stark, Ward, Wells, and Williams Counties.

4-10.3-05. Meetings - Quorum - Compensation and expenses of council. A majority of the voting members of the council constitutes a quorum for the transaction of all business in carrying out the duties of the council. The chairman shall call meetings of the council. The chairman shall call all special meetings on the petition of three council members within seven days of receiving the petition. The council shall determine the amount of compensation payable to each member of the council. The amount payable may not exceed seventy-five dollars per day plus reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the council. No compensation may be paid under this section to any member who receives compensation or salary as a regular state employee or official.

4-10.3-06. Expenditure of funds. Every expenditure of funds made pursuant to this chapter must be approved by the council or its designated agent, submitted upon itemized

voucher to the office of the budget for approval, and paid by warrant-check issued by the office of management and budget.

4-10.3-07. Council powers and duties. In the administration of this chapter, the council has the power and duty to:

1. Contract and cooperate with any person or with any governmental department or agency for research, education, publicity, promotion, and transportation for the purposes of this chapter.
2. Expend the funds collected pursuant to this chapter and appropriated for its administration.
3. Appoint, employ, bond, discharge, fix compensation for, and prescribe the duties of such administrative, clerical, technical, and other personnel as it may deem necessary.
4. Accept donations of funds, property, services, or other assistance from public or private sources for the purpose of furthering the objectives of the council.
5. Investigate and prosecute in the name of the state any action or suit to enforce the collection or ensure payment of the taxes authorized by this chapter, and to sue and be sued in the name of the council.

4-10.3-08. Tax levies - Collection - Reports - Continuing appropriation.

1. An assessment at the rate of ten cents per hundredweight [45.36 kilograms] must be levied and imposed upon all dry beans grown in this state, delivered into this state, or sold to a designated handler. This assessment is due upon any identifiable lot or quantity of dry beans.
2. A designated handler of dry beans shall file an application with the council on forms prescribed and furnished by the council which must contain the name under which the handler is transacting business within the state, the place or places of business, the location of loading and shipping places of agents of the first designated handler, the names and addresses of the several persons constituting the firm partnership, if a corporation, the corporate name and the names and addresses of its principal officers and agents within the state, and, if a limited liability company, the limited liability company name and the names and addresses of its principal managers and agents within this state.
3. The council shall issue a certificate to the designated handler. A designated handler may not sell, process, or ship any dry beans until it has furnished a certificate as required by this section.
4. The first designated handler in North Dakota of dry beans shall collect the assessment imposed by this section by charging and collecting from the seller the assessment at the rate of ten cents per hundredweight [45.36 kilograms] by deducting the assessment from the purchase price of all dry beans subject to the assessment and purchased by the designated handler.
5. Every designated handler shall keep as a part of its permanent records a record of all purchases, sales, and shipments of raw dry beans, which may be examined by the council at all reasonable times. Every designated handler shall report to the council stating the quantity in individual and total amounts of dry beans received, sold, or shipped by it. The report must state from whom each individual amount was received. The report must be made at the times and in the manner prescribed by the council. The remittance of the assessment as provided in this section must accompany the report. All moneys levied and collected under this chapter must be

paid to the council for deposit in the state treasury to the credit of a special revolving account designated the "dry bean fund". All money in the dry bean fund is appropriated on a continuing basis to the council to be used exclusively to carry out the intent and purposes of this chapter. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the agriculture commissioner.

4-10.3-09. Nonparticipating growers - Refunds. Any grower subject to the assessment provided in this chapter may, within sixty days following such assessment or final settlement, make application by personal letter to the dry bean council for a refund application blank. Upon the return of the blank, properly executed by the grower, accompanied by a record of the assessment by the designated handler, the grower must be refunded the net amount of the assessment collected. If no request for refund has been made within the period prescribed above then the grower is presumed to have agreed to such assessment. However, a grower, for any reason, having paid the tax more than once on the same dry beans, upon furnishing proof of this to the council, is entitled to a refund of the overpayment. The council, to inform the grower, shall develop and disseminate information and instructions relating to the purpose of the dry bean tax and manner in which refunds may be claimed, and to this extent shall cooperate with governmental agencies, state and federal, and private businesses engaged in the purchase of dry beans.

4-10.3-10. Referendum by growers. Whenever fifteen percent of the participating growers, with not more than fifty percent of the signatory parties from any one district, as disclosed by the records of the council for the preceding year, petition the council, the council shall conduct a referendum among the participating growers of the state to determine whether they wish the legislative assembly to raise or lower the tax imposed by section 4-10.3-08. Such referendum must be conducted only among participating growers who have paid all taxes assessed pursuant to this enactment for the preceding year, and the ballots must be prepared by the council and mailed to each participating grower at least thirty days prior to the last date for filing ballots. In addition, each ballot must be accompanied by a notice to each participating grower:

1. Of the date of the filing of the petition by the growers for the referendum and the number of signatures contained thereon.
2. Of the date and place where the council will open and tabulate the ballots, which date must be not less than five days after the last date for filing the ballots.
3. Of the last date upon which ballots must be filed with the council, or postmarked if delivered to the council by mail.
4. That any participating grower may attend the meeting of the council at the time the ballots are opened and the votes tabulated.

If a majority of the participating growers voting upon the question are in favor of the proposed change, the council shall certify the result to the commissioner with the request that the commissioner prepare a bill to submit to the next legislative session to modify this chapter in conformity therewith. The results of the referendum are advisory only and the legislative assembly is not obligated to adopt legislation enacting the proposals contained in any referendum.

4-10.3-11. Penalties.

1. Any person who violates the provisions of this chapter is guilty of a class B misdemeanor.
2. Any assessment levied by this chapter and unpaid by the date that the assessment becomes due is delinquent and the council may levy a penalty against the designated handler on such delinquent payments of ten percent of the assessment

due, plus interest at the rate of six percent per annum from the due date. The collection of any assessment or penalty must be made in an appropriate court within this state.

4-10.3-12. Penalty for nonpayment of assessment. Repealed by S.L. 1991, ch. 62, § 4.

4-10.3-13. Records of council - Inspection. All of the records of the council, including acreage reports, tax returns, claims of exemption, and any other data, records, or information retained by the council are public information and must be available for the inspection of any person for any lawful purpose during regular business hours at the office of the council.

4-10.3-14. Misdemeanor to violate chapter. Repealed by S.L. 1991, ch. 62, § 4.